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**SUBSTITUTE HOUSE BILL 2261**

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**State of Washington                      58th Legislature                      2003 Regular Session**

**By** House Committee on Appropriations (originally sponsored by Representatives Kagi and Cody)

READ FIRST TIME 04/23/03.

1            AN ACT Relating to services for persons with developmental  
2 disabilities; amending RCW 71A.10.020, 71A.10.030, 71A.10.050,  
3 71A.12.020, 71A.12.040, 71A.12.050, 71A.12.090, 71A.18.010, 71A.18.020,  
4 71A.18.030, 71A.18.050, 35.82.285, 71A.20.010, and 84.36.042; adding  
5 new sections to chapter 71A.18 RCW; adding a new section to chapter  
6 71A.10 RCW; creating a new section; repealing RCW 71A.10.010,  
7 71A.10.800, 71A.10.805, 71A.10.900, 71A.10.901, 71A.10.902, 71A.16.020,  
8 71A.16.030, 71A.16.040, 71A.16.050, and 71A.16.010; providing effective  
9 dates; and declaring an emergency.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

11            NEW SECTION. **Sec. 1.** The legislature finds that the number of  
12 individuals with a developmental disability is increasing. This  
13 growth, along with economic and social changes, presents opportunities  
14 for the development of long-term community services and creates a need  
15 for different approaches to long-term service programs. The  
16 legislature recognizes that the primary resource for long-term support  
17 continues to be family. However, family caregivers are increasingly  
18 employed outside the home. In addition, many families continue to  
19 support their sons and daughters when they are no longer legally

1 obligated to do so. The legislature finds that supporting caregivers  
2 in a collaborative fashion can keep families together, prevent out-of-  
3 home placements, and leverage public and private support for people  
4 with a developmental disability.

5 The legislature further finds the delivery of services to persons  
6 with developmental disabilities should be prioritized based upon an  
7 individual needs assessment. Limited state resources should be  
8 allocated in a manner that complements and supports the use of  
9 individual family and natural supports, enabling the individual to be  
10 independent and not reliant upon institutional or residential care  
11 services until such time as these services are required in order to  
12 reasonably assure the health and safety of the individual.

13 It is the intent of the legislature that the provisions of this act  
14 shall be applied to individuals currently and prospectively receiving  
15 services under Title 71A RCW. The immediate implementation of this act  
16 is necessary for the support of state government and its institutions  
17 and programs.

18 **Sec. 2.** RCW 71A.10.020 and 1998 c 216 s 2 are each amended to read  
19 as follows:

20 As used in this title, the following terms have the meanings  
21 indicated unless the context clearly requires otherwise.

22 (1) "Community residential support services," or "community support  
23 services," and "in-home services" means one or more of the services  
24 listed in RCW 71A.12.040.

25 (2) "Department" means the department of social and health  
26 services.

27 (3) "Developmental disability" means a disability attributable to  
28 mental retardation, cerebral palsy, epilepsy, autism, or another  
29 neurological or other condition of an individual found by the  
30 (~~secretary~~) department to be closely related to mental retardation or  
31 to require treatment similar to that required for individuals with  
32 mental retardation, which disability or other neurological or other  
33 condition originates before the individual attains age eighteen, and  
34 which has continued or can be expected to continue indefinitely, and  
35 which constitutes a substantial handicap to the individual. (~~By~~  
36 ~~January 1, 1989, the department shall promulgate rules which define~~

1 neurological or other conditions in a way that is not limited to  
2 intelligence quotient scores as the sole determinant of these  
3 conditions, and notify the legislature of this action.

4 ~~(4) "Eligible person" means a person who has been found by the~~  
5 ~~secretary under RCW 71A.16.040 to be eligible for services.~~

6 ~~(5))~~ (4) "Habilitative services" means those services (~~provided~~  
7 ~~by program personnel~~) to assist persons in acquiring and maintaining  
8 life skills and to raise their levels of physical, mental, social, and  
9 vocational functioning. Habilitative services include education,  
10 training for employment, supported employment, and therapy.

11 ~~((6))~~ (5) "Legal representative" means a parent of a person who  
12 is under eighteen years of age, a person's legal guardian, a person's  
13 limited guardian when the subject matter is within the scope of the  
14 limited guardianship, a person's attorney at law, a person's attorney  
15 in fact, or any other person who is authorized by law to act for  
16 another person.

17 (6) "Natural supports" means the provision of nonpaid assistance,  
18 support, or care which is conducted by mutual agreement between a  
19 person with a developmental disability and any entity in the community  
20 including, but not limited to, family, friends, neighbors, civic  
21 groups, or religious organizations.

22 (7) "Notice" or "notification" of an action of the secretary means  
23 notice in compliance with RCW 71A.10.060.

24 (8) "Residential habilitation center" means a state-operated  
25 facility for persons with developmental disabilities governed by  
26 chapter 71A.20 RCW.

27 (9) "Secretary" means the secretary of social and health services  
28 or the secretary's designee.

29 (10) "Service" or "services" means services provided by state or  
30 local government to carry out this title.

31 (11) "Vacancy" means an opening at a residential habilitation  
32 center, which when filled, would not require the center to exceed its  
33 (~~biannually~~ ~~[biennially]~~) biennially budgeted capacity.

34 **Sec. 3.** RCW 71A.10.030 and 1988 c 176 s 103 are each amended to  
35 read as follows:

36 (1) The existence of developmental disabilities does not affect the

1 civil rights of the person with the developmental disability except as  
2 otherwise provided by law.

3 (2) (~~The secretary's determination under RCW 71A.16.040 that a~~  
4 ~~person is eligible for services under this title shall not deprive the~~  
5 ~~person of any civil rights or privileges. The secretary's~~  
6 ~~determination alone shall not constitute cause to declare the~~) A  
7 person ((to be)) is not legally incompetent solely because he or she is  
8 receiving services under this title.

9 (3) The department shall emphasize to the persons and entities it  
10 contracts with the importance of recognizing the rights of a person  
11 with a developmental disability referenced in 42 U.S.C. Sec. 15009.  
12 The department shall require contractees to post these rights and make  
13 them readily available to persons who have a developmental disability.

14 (4) This title shall not be construed to deprive the parent or  
15 parents of any parental rights with relation to a child residing in a  
16 residential habilitation center, except as provided in this title for  
17 the orderly operation of such residential habilitation centers.

18 **Sec. 4.** RCW 71A.10.050 and 1989 c 175 s 138 are each amended to  
19 read as follows:

20 (1) An applicant or recipient or former recipient of a  
21 developmental disabilities service under this title from the department  
22 of social and health services has the right to appeal the following  
23 department actions:

24 (a) A denial of (~~an application for eligibility under RCW~~  
25 ~~71A.16.040)) a determination that a person has a developmental~~  
26 disability;

27 (b) An unreasonable delay in acting on an application (~~for~~  
28 ~~eligibility~~) for a service(~~τ~~) or for an alternative service under  
29 RCW 71A.18.040;

30 (c) A denial, reduction, or termination of a service;

31 (d) A claim that the person owes a debt to the state for an  
32 overpayment;

33 (e) A disagreement with an action of the secretary under RCW  
34 71A.10.060 or 71A.10.070;

35 (f) A decision to return a resident of (~~an [a]~~) a habilitation  
36 center to the community; and

1 (g) A decision to change a person's placement from one category of  
2 residential services to a different category of residential services.

3 The adjudicative proceeding is governed by the Administrative  
4 Procedure Act, chapter 34.05 RCW.

5 (2) This subsection applies only to an adjudicative proceeding in  
6 which the department action appealed is a decision to return a resident  
7 of a habilitation center to the community. The resident or his or her  
8 representative may appeal on the basis of whether the specific  
9 placement decision is in the best interests of the resident. When the  
10 resident or his or her representative files an application for an  
11 adjudicative proceeding under this section the department has the  
12 burden of proving that the specific placement decision is in the best  
13 interests of the resident.

14 (3) When the department takes any action described in subsection  
15 (1) of this section it shall give notice as provided by RCW 71A.10.060.  
16 The notice must include a statement advising the recipient of the right  
17 to an adjudicative proceeding and the time limits for filing an  
18 application for an adjudicative proceeding. Notice of a decision to  
19 return a resident of a habilitation center to the community under RCW  
20 71A.20.080 must also include a statement advising the recipient of the  
21 right to file a petition for judicial review of an adverse adjudicative  
22 order as provided in chapter 34.05 RCW.

23 **Sec. 5.** RCW 71A.12.020 and 1988 c 176 s 202 are each amended to  
24 read as follows:

25 ~~(1) ((To the extent that state, federal, or other funds designated~~  
26 ~~for services to persons with developmental disabilities are available,~~  
27 ~~the secretary shall provide every eligible person with habilitative~~  
28 ~~services suited to the person's needs, regardless of age or degree of~~  
29 ~~developmental disability.~~

30 ~~(2))~~ The secretary shall provide persons who receive services with  
31 the opportunity for integration with ~~((nonhandicapped and less~~  
32 ~~handicapped persons))~~ people without disabilities to the greatest  
33 extent possible.

34 ~~((3))~~ (2) The secretary shall establish minimum standards for  
35 ~~((habilitative))~~ services through the development of a quality  
36 assurance system. Consumers, advocates, service providers, appropriate

1 professionals, and local government agencies shall be involved in the  
2 development of the standards.

3 **Sec. 6.** RCW 71A.12.040 and 1988 c 176 s 204 are each amended to  
4 read as follows:

5 Services that the secretary may provide or arrange with others to  
6 provide, or the individual may self-direct, under this title include,  
7 but are not limited to:

- 8 (1) Architectural services;
- 9 (2) Case management services;
- 10 (3) Early childhood intervention;
- 11 (4) Employment services, including supported employment;
- 12 (5) Family counseling;
- 13 (6) Family support;
- 14 (7) Information and referral;
- 15 (8) Health services and equipment;
- 16 (9) Legal services;
- 17 (10) Residential services and support, including voluntary  
18 placement and community protection;
- 19 (11) Respite care;
- 20 (12) Therapy services and equipment;
- 21 (13) Transportation services; and
- 22 (14) Vocational services.

23 **Sec. 7.** RCW 71A.12.050 and 1988 c 176 s 205 are each amended to  
24 read as follows:

25 The secretary may make payments for nonresidential services which  
26 exceed the cost of caring for an average individual at home, and which  
27 are reasonably necessary for the care, treatment, maintenance, support,  
28 and training of persons with developmental disabilities, upon  
29 application pursuant to RCW 71A.18.050. The secretary shall prioritize  
30 nonresidential services to individuals identified as priorities in RCW  
31 71A.12.090. The secretary shall adopt rules determining the extent and  
32 type of care and training for which the department will pay all or a  
33 portion of the costs.

34 **Sec. 8.** RCW 71A.12.090 and 1988 c 176 s 209 are each amended to  
35 read as follows:

1       (~~If a person with developmental disabilities is the parent of a~~  
2 ~~child who is about to be placed for adoption or foster care by the~~  
3 ~~secretary, the parent shall be eligible to receive services in order to~~  
4 ~~promote the integrity of the family unit.)) For individuals with a  
5 developmental disability who are waiting for service, the department  
6 shall identify priority populations based upon assessed need. The  
7 priorities shall be based on the severity of an individual's  
8 disability; including whether the impact of the disability is profound,  
9 severe, moderate, or mild, and shall include an evaluation of any  
10 extraordinary behavioral issues and severe physical impairments, and  
11 the conditions surrounding the individual's caregiver.~~

12       NEW SECTION. Sec. 9. A new section is added to chapter 71A.18 RCW  
13 to read as follows:

14       It is the intent of the legislature that the department establish  
15 a single point of referral for persons with developmental disabilities  
16 and their families so that they may have a place of entry and  
17 continuing contact for services.

18       NEW SECTION. Sec. 10. A new section is added to chapter 71A.18  
19 RCW to read as follows:

20       (1) The department shall develop a tool for the comprehensive  
21 assessment of need for services under this title. The department is  
22 not required to meet all needs of a person with a developmental  
23 disability. The tool shall identify natural supports and any services  
24 that would supplement the natural supports. The assessment tool shall  
25 be implemented by January 2004. Development of a computer-based system  
26 may require additional time and funding, which should be reported to  
27 the legislature by September 2003.

28       (2) The assessment shall include the identification of any specific  
29 limitations of the primary caregiver; including low income, an aging  
30 caregiver, a single caregiver, a caregiver with a disability, a  
31 caregiver with multiple children with a disability, or no identified  
32 caregiver. The assessment shall be based upon the developmental age  
33 and the level of functioning of the individual with a developmental  
34 disability.

1       **Sec. 11.** RCW 71A.18.010 and 1988 c 176 s 501 are each amended to  
2 read as follows:

3       (1) In order for a person with a developmental disability to access  
4 services that the person with a developmental disability has been  
5 assessed to need and has been authorized to receive, the secretary  
6 ((may)) shall produce and maintain an individual service plan for each  
7 ((eligible)) person with a developmental disability that is reviewed  
8 annually and revised as needed. An individual service plan is a plan  
9 that identifies the needs of a person for services and determines what  
10 services will be in the best interests of the person and ~~((will meet~~  
11 ~~the person's needs))~~ which individuals and entities are responsible for  
12 providing the identified services. The secretary is not required to  
13 provide for all the needs identified in the individual service plan.  
14 The service plan shall be developed collaboratively with the person  
15 with a developmental disability and the person with a developmental  
16 disability's natural supports, and any other person considered integral  
17 to the service planning process. The service plan shall be developed  
18 within a reasonable period of time following the department's needs  
19 assessment and authorization that the person with a developmental  
20 disability receive services.

21       (2) In reviewing the annual individual service plan of clients  
22 currently receiving services, the department may modify the type,  
23 level, and intensity of services provided, based on the assessment of  
24 the client. The department shall ensure that intake, eligibility, and  
25 the individual assessment process shall be implemented uniformly and  
26 completed within established time frames.

27       **Sec. 12.** RCW 71A.18.020 and 1988 c 176 s 601 are each amended to  
28 read as follows:

29       The ~~((secretary may))~~ department's duty to provide a service to a  
30 person ((eligible)) with a developmental disability under this title  
31 ((if)) is limited by the funds ((are available. If there is an  
32 individual service plan, the secretary shall consider the need for  
33 services as provided in that plan)) specifically appropriated to  
34 administer this title.

35       Limitations in funding can be the basis for denying services to a  
36 person with a developmental disability not enrolled in medicaid or a

1 federal medicaid waiver program, and limitations in funding can be the  
2 basis for denying nonwaiver services to a person with a developmental  
3 disability enrolled in medicaid or a federal medicaid waiver program.

4 NEW SECTION. **Sec. 13.** A new section is added to chapter 71A.18  
5 RCW to read as follows:

6 (1) An applicant enrolled in a medicaid waiver or receiving waiver  
7 services must be ICF/MR eligible.

8 (2) Accessing medicaid for an applicant by enrolling an applicant  
9 in a medicaid waiver is prohibited, unless the applicant is assessed to  
10 need waiver services and is a person assessed to meet the criteria of  
11 a priority population.

12 (3) The department shall evaluate medicaid cost-sharing options for  
13 applicants enrolled in a medicaid waiver and report to the legislature  
14 regarding its findings by September 2003.

15 (4) The department shall evaluate available cost-effective options  
16 for covering an applicant assessed to need medical coverage and report  
17 to the legislature regarding its findings by September 2003.

18 (5) The department shall comply with all federal requirements that  
19 are necessary for the receipt of federal funds.

20 **Sec. 14.** RCW 71A.18.030 and 1988 c 176 s 602 are each amended to  
21 read as follows:

22 (~~An eligible~~) A person with a developmental disability or the  
23 (~~person's~~) person with a developmental disability's legal  
24 representative may reject an authorized service. Rejection of an  
25 authorized service shall not affect the person's eligibility for  
26 services and shall not eliminate the person from consideration for  
27 other services or for the same service at a different time or under  
28 different circumstances.

29 **Sec. 15.** RCW 71A.18.050 and 1988 c 176 s 604 are each amended to  
30 read as follows:

31 (1) When considering the discontinuance of a service that is being  
32 provided to a person, the secretary shall consult as required in RCW  
33 71A.10.070.

34 (~~The discontinuance of a service under this section does not~~

1 ~~affect the person's eligibility for services.))~~ Other services may be  
2 provided or the same service may be restored when it is again available  
3 or when it is again needed.

4 (3) Except when the service is discontinued at the request of the  
5 person receiving the service or that person's legal representative, the  
6 secretary shall give notice as required in RCW 71A.10.060.

7 NEW SECTION. **Sec. 16.** A new section is added to chapter 71A.18  
8 RCW to read as follows:

9 The department shall coordinate with the office of the  
10 superintendent of public instruction to access funding to the fullest  
11 extent possible so that a person with a disability can achieve the  
12 maximum level of self-sufficiency, including employability. The  
13 department shall coordinate with all other state agencies to achieve  
14 early intervention that may prevent the need for more complex and  
15 costly services later in the person's development.

16 NEW SECTION. **Sec. 17.** A new section is added to chapter 71A.10  
17 RCW to read as follows:

18 The department may adopt rules to implement this act.

19 **Sec. 18.** RCW 35.82.285 and 1991 c 167 s 3 are each amended to read  
20 as follows:

21 Housing authorities created under this chapter may establish and  
22 operate group homes or halfway houses to serve juveniles released from  
23 state juvenile or correctional institutions, or to serve the  
24 developmentally disabled as defined in RCW 71A.10.020(~~(+2)~~).  
25 Authorities may contract for the operation of facilities so  
26 established, with qualified nonprofit organizations as agent of the  
27 authority. Authorities may provide support or supportive services in  
28 facilities serving juveniles, the developmentally disabled or other  
29 persons under a disability, and the frail elderly, whether or not they  
30 are operated by the authority.

31 Action under this section shall be taken by the authority only  
32 after a public hearing as provided by chapter 42.30 RCW. In exercising  
33 this power the authority shall not be empowered to acquire property by  
34 eminent domain, and the facilities established shall comply with all

1 zoning, building, fire, and health regulations and procedures  
2 applicable in the locality.

3 **Sec. 19.** RCW 71A.20.010 and 1988 c 176 s 701 are each amended to  
4 read as follows:

5 This chapter covers the operation of residential habilitation  
6 centers. The selection of persons to be served at the centers is  
7 governed by (~~chapters 71A.16 and 71A.18 RCW~~) this title. The  
8 purposes of this chapter are: To provide for those children and adults  
9 who are exceptional in their needs for care, treatment, and education  
10 by reason of developmental disabilities, residential care designed to  
11 develop their individual capacities to their optimum; to provide for  
12 admittance, withdrawal and discharge from state residential  
13 habilitation centers upon application; and to insure a comprehensive  
14 program for the education, guidance, care, treatment, and  
15 rehabilitation of all persons admitted to residential habilitation  
16 centers.

17 **Sec. 20.** RCW 84.36.042 and 1998 c 202 s 1 are each amended to read  
18 as follows:

19 (1) All real and personal property owned or leased by a nonprofit  
20 organization, corporation, or association to provide housing for  
21 (~~eligible~~) persons with developmental disabilities is exempt from  
22 property taxation.

23 (a) To qualify for this exemption, the nonprofit organization,  
24 corporation, or association must be qualified for exemption under  
25 section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec.  
26 501(c)(3)). It must also have been organized for charitable purposes  
27 to create and preserve long-term affordable housing for low-income  
28 developmentally disabled persons.

29 (b) The housing must be occupied by (~~eligible~~) persons with a  
30 developmental disability who have a low income.

31 (2) As used in this section:

32 (a) "Developmental disability" means the same as defined in RCW  
33 71A.10.020;

34 (b) (~~"Eligible person" means the same as defined in RCW~~  
35 ~~71A.10.020; and~~

1       (←)) "Low income" means the adjusted gross income of the resident  
2 is at eighty percent or less of the median income adjusted for family  
3 size, as most recently determined by the federal department of housing  
4 and urban development for the county in which the housing is located  
5 and in effect as of January 1st of the assessment year for which the  
6 exemption is sought. "Adjusted gross income" is as defined in the  
7 federal internal revenue code of 1986, as it exists on June 11, 1998,  
8 or such subsequent date as the director may provide by rule consistent  
9 with the purpose of this section.

10       (3) To be exempt under this section, the property must be used  
11 exclusively for the purposes for which the exemption is granted, except  
12 as provided in RCW 84.36.805.

13       (4) If the real or personal property for which exemption is sought  
14 is leased, the benefit of the exemption must inure to the nonprofit  
15 organization, corporation, or association leasing the property to  
16 provide the housing for developmentally disabled persons.

17       NEW SECTION.   **Sec. 21.** The following acts or parts of acts are  
18 each repealed:

19       (1) RCW 71A.10.010 (Legislative finding--Intent--1988 c 176) and  
20 1988 c 176 s 1;

21       (2) RCW 71A.10.800 (Application of Title 71A RCW to matters pending  
22 as of June 9, 1988) and 1988 c 176 s 1008;

23       (3) RCW 71A.10.805 (Headings in Title 71A RCW not part of law) and  
24 1988 c 176 s 1002;

25       (4) RCW 71A.10.900 (Severability--1988 c 176) and 1988 c 176 s  
26 1003;

27       (5) RCW 71A.10.901 (Saving--1988 c 176) and 1988 c 176 s 1004;

28       (6) RCW 71A.10.902 (Continuation of existing law--1988 c 176) and  
29 1988 c 176 s 1001;

30       (7) RCW 71A.16.020 (Eligibility for services--Rules) and 1988 c 176  
31 s 402;

32       (8) RCW 71A.16.030 (Outreach program--Determination of eligibility  
33 for services--Application) and 1998 c 216 s 4 & 1988 c 176 s 403;

34       (9) RCW 71A.16.040 (Determination of eligibility--Notice--Rules for  
35 redetermination) and 1989 c 175 s 141 & 1988 c 176 s 404; and

36       (10) RCW 71A.16.050 (Determination of eligibility--Effect--  
37 Determination of appropriate services) and 1988 c 176 s 405.

1        NEW SECTION.    **Sec. 22.**    RCW 71A.16.010 (Referral for services--  
2    Admittance to residential habilitation centers--Expiration of  
3    subsections) and 1998 c 216 s 3 & 1988 c 176 s 401 are each repealed,  
4    effective June 30, 2003.

5        NEW SECTION.    **Sec. 23.**    If any provision of this act or its  
6    application to any person or circumstance is held invalid, the  
7    remainder of the act or the application of the provision to other  
8    persons or circumstances is not affected.

9        NEW SECTION.    **Sec. 24.**    This act is necessary for the immediate  
10    preservation of the public peace, health, or safety, or support of the  
11    state government and its existing public institutions, and takes effect  
12    July 1, 2003.

--- END ---